

ORDER BELOW EXH.5 IN PWDVA No. 37/2022

(Dipika Nilesh Dudhe & another Vs. Nilesh Padmakar Dudhe & ors.)

This is an application for interim maintenance filed under Section 23 of Protection of Women From Domestic Violence Act, 2005. In present matter said application was previously decided on 04/10/2022 and said application was partly allowed. Thereafter, the present applicant had preferred P.W.D.V.A Appeal No. 17/2022 as regards the quantum granted as per order dated 04/10/2022. In said appeal the Hon'ble Additional Session Judge, Wardha has passed the order and accordingly the order dated 04/10/2022 was set aside and matter is remanded by to decide the application Exh. 5 afresh after compliance about disclosure of assets and liabilities by both the parties. Hence, the said application is again before me for consideration.

2. In said matter both the parties were directed to file their affidavits as regards their assets and liabilities as per the judgment of Hon'ble Apex Court passed in the case of ***Rajnish Vs. Neha & another in Criminal Appeal No. 730/2020***. Accordingly, the applicant No.1 has filed her affidavit below Exh. 11 and the non-applicant No.1 has filed affidavit below Exh. 12. Hence, the present application is taken up for afresh consideration after the necessary compliance ordered by Hon'ble District Court.

3. The case of applicant No.1 is in short as follows :-

That, she and non applicant no. 1 had married on 30/04/2015 and their marital relationship is still in existence. She further contended that, out of their wedlock a son namely Piyush has begotten. She has also contended that, after the marriage she started residing with the non-applicant No.1 to 5 and non applicants have ill-treated the

applicant. They always used to abuse, assault her. She has also contended that, while the Non-applicant No.1 was serving at Delhi, at that time she, non-applicant No.2 were also living at Delhi and the non-applicants have ill-treated her. Further, the non-applicants while the applicant was pregnant have not looked after her, all the necessary expenses of hospital were paid by her father.

4. The applicant has also contended that, the non-applicants on 18/08/2018 has abused and assaulted her and compelled to leave the matrimonial home and since then she is residing at her parental house. Thereafter, in 2019 she has intended to cohabit but the non-applicants have refused and sent false notice dated 23/07/2019. She has also contended that, the non-applicant No.1 is Engineer and doing job from which he is getting package of Rs. 11,00,000/- per year. Further, the non-applicants have 6 Acre agriculture land from which he is earning Rs. 11,00,000/- per year. Furthermore, he has four wheeler car, Matador car and flat at Mumbai. She has contended that, the minor applicant is taking education at Gurukul Convent School, Karanja (Gha.) and she is unable to pay the fees, bus fees. Further, the applicant has contended that, due to domestic violence she is unable to maintain herself and her son and hence, she has prayed for interim maintenance of Rs. 15,000/- per month for herself and minor son.

5. The non-applicant No.1 to 5 have filed their say below Exh.9 and denied the contentions of main application and present application. They have admitted the relationship between the parties. Per contra, contended that, after the marriage the applicant came for cohabitation but she was without any reason fighting with the non-applicant No.1 to 5, she was abusing them. It is further contended that, the non-applicant No.1 has filed petition under Hindu Marriage Act for dissolution of

marriage and thereafter, only with intent to harass the non-applicants the present application is moved.

6. It is also contended that, the non-applicant No.1 is Engineer and serving at Delhi, earning Rs. 11 lacs package. Further, they have also admitted that, they have 6 Acre agriculture land. The non-applicants further contended that, due to pandemic of Covid-19 non-applicant No.1 has become jobless, he has no source of income. Further, the non-applicant No.1 has relinquished his right from the agriculture land and thereafter purchased the flat at Mumbai. Further, he has sold out said flat for repayment of loan amount. He has further contended that, he is not able to pay the amount and hence, prayed for rejection of application.

7. I have again heard the learned advocates for the parties. The Ld. advocate for the applicant has submitted that, relationship is not disputed, the non-applicants have ill-treated the applicant, the non-applicant No.1 is highly qualified and has handsome salary. The non-applicants have agriculture lands, she has relied upon the 7/12 extract, school documents and assets and liabilities affidavit. Hence, she prayed to allow the application.

8. Per contra, Ld. advocate for the non-applicants has submitted that, the order passed dated 04/10/2022 is legal and proper, the quantum is also proper and the non-applicant No.1 is jobless and so can not pay maintenance amount. Further, submitted that, the applicants have also claimed maintenance in petition filed by the non-applicant No.1. Hence, he prayed for rejection of application.

9. Perused the record. The relationship is not disputed by the parties. After perusing the entire contentions of the application it reveals

that, the applicant and non applicant no. 1 has married on 30/04/2015 and thereafter, they are residing together till 18/08/2018. In present matter applicant No.1 has on oath contended that the non applicants used to always ill-treat her, abused her and assault her. So it seems that, after the marriage for the period of more than three years the applicant has cohabited with the non-applicants. After considering the contentions of the applicant it seems that, there are prima facie some grounds of domestic violence.

10. Applicant is contending that, the non-applicant no.1 is having private job and earning Rs.11 lacs per year also contended that, his family has 6 Acre agriculture land. Per contra, non-applicant No.1 is contending that, he is Engineer and was getting package of 11 lacs but due to Covid-19 he is now jobless. He has also contended that, he has relinquished his right from the agriculture land. So it is not disputed that, the non-applicant No.1 is qualified and was serving at Delhi. Further, nothing is placed on record on the point of relinquishment of his right. The applicant has filed 7/12 extract of survey No. 224/1/b, survey No.6. After perusing the same, it reveals that, the land stands in the name of non-applicant No.2, 3 & 5. Further, in 7/12 extract of survey No. 224/1/b as per M.E. No. 9189 name of non-applicant No.1 is shown as deleted but he has not filed said mutation entry or any document of relinquishment.

11. After perusing the affidavits below Exh. 11 & 12, it is prima facie evident that, the non-applicant is an Engineer. Further, the non-applicant by way of Exh.12 has contended that, the applicant No.1 is running a business of beauty parlour and earning Rs. 10,000/- per month. The non-applicant had filed no documentary evidence in this respect. From the record, it is evident that, the applicants and the non-applicant No.1 are residing separately from 18/08/2018, it is not the case of non-

applicants that, the applicant while residing with them was running a beauty parlour business. The non-applicant has contended vide Exh. 12 that, his mother is depended upon him. The 7/12 extract filed on record shows that, agriculture land is in the name of his mother.

12. So after considering the rival contentions of the parties, the assets and liabilities affidavits filed by the parties, at this juncture, it is prima facie evident that, non-applicant No.1 has handsome salary and it seems that the financial condition of non-applicant No.1 and his family is sound. Per contra, from the year 2018 the applicants are residing at parental house. Further, from the school documents filed on record it reveals that, the minor applicant has school fees of Rs. 9000/- per year, bus fees of Rs. 600/- per month. The affidavit Exh. 12 shows that, prior to this application there is no maintenance awarded to the applicants. Further, Exh. 12 shows that, the non-applicant No.2 does not bears any expenses for maintenance of dependent, does not bears any expenses of food, clothing, education etc.

13. So after considering the all above aspects, relationship between the parties, I hold that, the application prima facie discloses that domestic violence has been committed. So in such situation and considering the basic needs of the applicants in today's hour, considering the educational expenses and other expenses and the financial condition of the non-applicant No.1, I hold that, awarding interim maintenance of Rs.4000/- each to the applicant No.1 & 2 will be just and proper. Further, awarding application cost of Rs. 1000/- will be proper. Hence, I proceed to pass the following order.

ORDER

1. Application is partly allowed.
2. The non applicant no.1 is directed to pay interim maintenance of Rs. 4000/- (Rs. Four thousand Only) each per month to applicant No.1 & 2 from the date of filing the application i.e. 27/07/2022.
3. The non-applicant no. 1 is directed to pay cost amount of Rs. 1,000/- (Rupees One Thousand Only) to the applicants.
4. Copies be provided to both parties free of cost.

(Dictated and pronounced in the open Court)

Date:-08/08/2023
Karanja (Gha.).

(V.S. Wagh)
Judicial Magistrate, F.C.,
Karanja (Gha.)